

<p align="center">U.S. Department of Labor Employment and Training Administration Washington, D.C. 20210</p>	CLASSIFICATION UI /DUA
	CORRESPONDENCE SYMBOL TEUMI
	DATE January 25, 1990

DIRECTIVE : UNEMPLOYMENT INSURANCE PROGRAM LETTER NO. 14-90

TO : ALL STATE EMPLOYMENT SECURITY AGENCIES

FROM : DONALD J. KULICK
Administrator *D.J. Kulick*
for Regional Management

SUBJECT : Publication of the Interim Final Rule
Amending the Disaster Unemployment Assistance
(DUA) Regulations

1. Purpose. To transmit a copy of the Interim Final Rule amending the DUA regulations (20 CFR Part 625).

2. References. 20 CFR Part 625.

3. Substance. The Interim Final Rule amending the DUA regulations (20 CFR Part 625) was published in the Federal Register on January 5, 1990. The rule will fully implement the DUA amendments to the Disaster Relief Act of 1974 made by The Disaster Relief and Emergency Assistance Amendments of 1988, P.L. 100-707, and other clarifying changes.

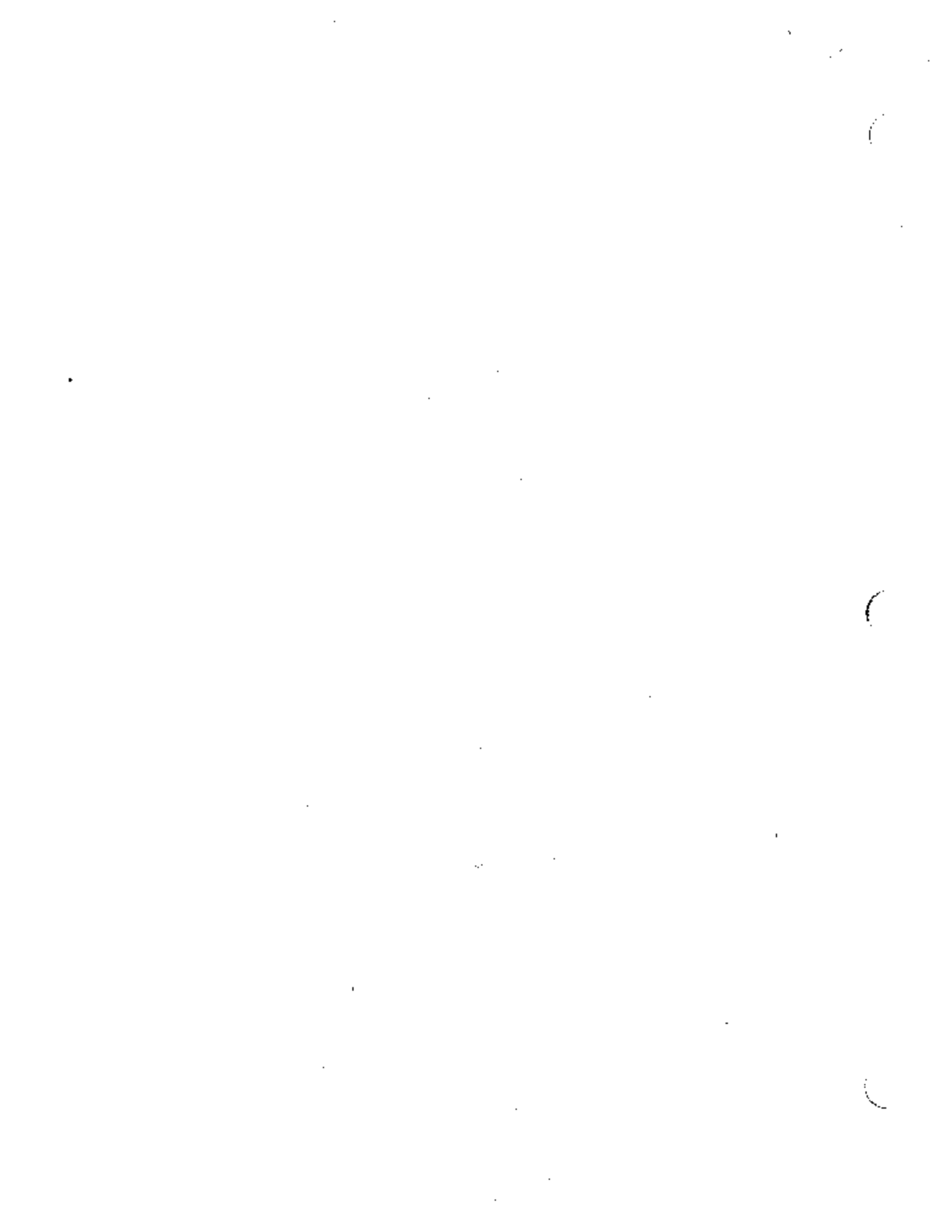
As an Interim Final Rule, all amendments are effective on the date of publication. However, a 30-day comment period is provided. Comments received during this period will be considered in the preparation of the final rule.

4. Action Required. State Administrators are requested to furnish a copy of the rule to appropriate staff for implementation of the provisions. In addition, State Administrators are invited to provide comments on the rule as directed in the publication. Comments should be made by February 5, 1990.

5. Inquiries. Please direct all inquiries to the appropriate Regional Office.

6. Attachment. Federal Register publication.

REVISIONS DISTRIBUTION	EXPIRATION DATE September 30, 1990
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payable if the individual is otherwise eligible.

Section 625.2(e), definition of "Date the major disaster began", is revised to reflect the current responsible Federal agency for coordinating disaster relief activities, namely, the Federal Emergency Management Agency.

Section 625.2(1), which defines "Major disaster area", is revised to reflect, as discussed above, the Federal Emergency Management Agency.

The separate definition of "State law" for the Virgin Islands that is provided in § 625.2(f)(1)(ii) is removed as the Virgin Islands are now included in the "State law" provisions of § 625.2(f)(1)(i), which reflects the Virgin Islands status as a "State" under P.L. 96-386.

Although not required by the changes in the Stafford Act, §§ 625.5(a)(1) and (b)(1) are clarified to conform with the definition of the term "week of unemployment", so that individuals who become partially unemployed as a result of a disaster will be eligible for DUA benefits. These clarifying changes are consistent with and reflect the interpretation given to the present regulations.

Section 625.8(f) is revised to reflect that the Secretary's "Standard for Claim Filing, Claimant Reporting, Job Finding and Employment Services" is now provided as Appendix A of this part.

Section 625.9(f) is revised to reflect that the Secretary's "Standard for Claim Determinations—Separation Information" is now provided as Appendix B of this part.

A new § 625.30 is added to provide appeal procedures for Guam, American Samoa, and the Trust Territory of the Pacific Islands. In the current regulations, these procedures are set forth in § 625.10(b) and (c), which incorporate by reference certain appeal procedures of the Unemployment Compensation for Federal Employees Program at §§ 609.34 through 609.45 of this chapter. Those sections are no longer in existence; therefore, the text of §§ 609.34 through 609.45 has been adapted and incorporated into a new § 625.30. These adapted procedures provide for filing of appeals in a referee, conduct of a fair and impartial hearing, providing notice of decision, representation, and other matters related to an administrative appeal proceeding.

Other changes have been made throughout § 625.10 to correct titles of individuals and to improve clarity of the provisions.

Section 625.10(e) is revised to provide that the Secretary's appeals promissory standard no longer applies to DUA appeals because all decisions must be

issued within 30 days of receipt of the appeal by the State agency in order to allow a Federal official to issue a decision within 90 days of receipt of the appeal.

Sections 625.14(b)(1) and (2) are revised to remove the references to the overpayment recovery limitations of the Special Unemployment Assistance Program, which is no longer in existence. In addition, a paragraph (b)(3) is added to require cross-program (State program and Federal programs) offset if a State has an agreement with the Secretary of Labor under section 303(g)(2) of the SEA. This would require a DUA overpayment to be offset against payments of State unemployment compensation.

Section 625.14(h) is revised to reflect that the Secretary's "Standard for Fraud and Overpayment Detection" is now provided as Appendix C of this part.

Drafting Information

This document was prepared under the direction and control of the Director, Unemployment Insurance Service, Employment and Training Administration, U.S. Department of Labor, 200 Constitution Avenue, NW, Washington, DC 20210; Telephone (202) 523-7831 (this is not a toll-free number).

Classification—Executive Order 12291

The interim final rule in this document is not classified as a "major rule" under Executive Order 12291 on Federal Regulations, because it is not likely to result in: (1) an annual effect on the economy of \$100 million or more; (2) a major increase in costs or prices for consumers, individual industries, Federal, State or local government agencies, or geographic regions; or (3) significant adverse effects on competition, employment, investment, productivity, innovation, or the ability of United States-based enterprises to compete with foreign-based enterprises in domestic or export markets.

Paperwork Reduction Act

In accordance with the Paperwork Reduction Act of 1980, 44 U.S.C. Ch. 35, approval has been obtained from the Office of Management and Budget (OMB) for the recordkeeping and reporting requirements under § 625.16(a) for the DUA forms ETA 90-2, 81, 81A, 82, and 84. The OMB control number for the 90-2 is 1206-0234 and for the 81, 81A, 82, 83 and 84 it is 1205-0051. OMB approval has also been obtained for the recordkeeping and reporting required under § 625.18(h) under OMB control number 1208-0051.

Regulatory Flexibility Act

No regulatory flexibility analysis is required where the rule "will not have a significant economic impact on a substantial number of small entities" (5 U.S.C. 605(b)). The definition of the term "small entity" under 5 U.S.C. 601(8) does not include States. Since these regulations involve an entitlement program administered by the States, and are directed to the States, no regulatory flexibility analysis is required. The Secretary has certified to the Chief Counsel for Advocacy of the Small Business Administration to this effect. Accordingly, no regulatory flexibility analysis is required.

Catalog of Federal Domestic Assistance Number

This program is listed in the Catalog of Federal Domestic Assistance at No. 17-225, "Disaster Unemployment Assistance (DUA)."

List of Subjects in 28 CFR Part 625

Disaster Unemployment Assistance, Labor, reemployment services, unemployment compensation.

Words of Issuance

For reasons set out in the preamble, part 625 of title 20, Code of Federal Regulations, is amended as set forth below.

Signed at Washington, DC, on December 13, 1989.

Robert T. Jones,

Assistant Secretary of Labor.

PART 625—DISASTER UNEMPLOYMENT ASSISTANCE

1. The authority for part 625 is revised to read as follows:

Authority: 42 U.S.C. 1302; 42 U.S.C. 5104; 42 U.S.C. 5180a(c); 42 U.S.C. 5207(a); Executive Order 12673 of March 23, 1989 (54 FR 12571); delegation of authority from the Director of the Federal Emergency Management Agency to the Secretary of Labor, effective December 1, 1985 (51 FR 4080); Secretary's Order No. 4-75 (40 FR 16515).

2. The Table of Contents for part 625 is amended by adding at the end thereof entries for new § 625.30 and Appendix A, Appendix B and Appendix C to read as follows:

Sec.

625.30 Appeal Procedures for Guam, American Samoa, and the Trust Territory of the Pacific Islands.

Appendix A to Part 625—Standard for Claim Filing, Claimant Reporting, Job Finding and Employment Services
Appendix B to Part 625—Standard for Claim Determinations—Separation Information

Appendix C to Part 625—Standard for Fraud and Overpayment Detection

3. Paragraphs (e), (b) and (c) of § 625.1 are revised to read as follows:

§ 625.1 Purpose; rules of construction.

(a) *Purpose.* Section 410 of "The Robert T. Stafford Disaster Relief and Emergency Assistance Act" amended the program for the payment of unemployment assistance to unemployed individuals whose unemployment is caused by a major disaster, and to provide reemployment assistance services to those individuals. The unemployment assistance provided for in section 410 of the Act is hereinafter referred to as Disaster Unemployment Assistance, or DUA. The regulations in this part are issued to implement sections 410 and 423 of the Act.

(b) *First rule of construction.* Sections 410 and 423 of the Act and the implementing regulations in this part shall be construed liberally so as to carry out the purposes of the Act.

(c) *Second rule of construction.* Sections 410 and 423 of the Act and the implementing regulations in this part shall be construed so as to assure insofar as possible the uniform interpretation and application of the Act throughout the United States.

4-5. Section 625.2 is amended by revising paragraphs (a), (e), (f), (h), (k), (l), (p), (q) and (r)(1) and by redesignating paragraph (d)(1) as the introductory text of paragraph (d) and redesignating paragraphs (d)(2) through (d)(6) as (d)(1) through (d)(5) and revising newly redesignated introductory text to paragraph (d) and paragraphs (d)(4) and (d)(5) to read as follows:

§ 625.2 Definitions.

(a) "Act" means sections 410 and 423 of The Robert T. Stafford Disaster Relief and Emergency Assistance Act (formerly section 407 of the "Disaster Relief Act of 1974", Pub. L. 93-288, 88 Stat. 143, 158, approved May 22, 1974), 42 U.S.C. 5177, 5189a, as amended by The Disaster Relief and Emergency Assistance Amendments of 1988, Pub. L. 100-707, 102 Stat. 4889, 4704, 4705, approved November 23, 1988.

(d) "Compensation" means unemployment compensation as defined in section 85(h) of the Internal Revenue Code of 1986, and shall include any assistance or allowance payable to an

individual with respect to such individual's unemployment under any State law or Federal unemployment compensation law unless such governmental unemployment compensation program payments are not considered "compensation" by ruling of the Internal Revenue Service or specific provision of Federal and/or State law because such payments are based on employee contributions which are not deductible from Federal income tax liability until the total nondeductible contributions paid by the employee to such program has been paid or are not "compensation" as defined under paragraph (d)(5) of this section. Governmental unemployment compensation programs include (but are not limited to) programs established under: a State law approved by the Secretary of Labor pursuant to section 3304 of the Internal Revenue Code, chapter 85 of title 5 of the United States Code, the Railroad Unemployment Insurance Act (45 U.S.C. 351 *et seq.*), any Federal supplementary compensation law, and trade readjustment allowances payable under chapter 2 of title II of the Trade Act of 1974 (19 U.S.C. 2271 *et seq.*). "Compensation" also includes "regular compensation", "additional compensation", "extended compensation", "Federal supplementary compensation", and "disability payments" defined as follows:

(4) "Federal supplementary compensation" means supplemental compensation payable under a temporary Federal law after exhaustion of regular and extended compensation.

(5) "Disability payments" means cash disability payments made pursuant to a governmental program as a substitute for cash unemployment payments to an individual who is ineligible for such payments solely because of the disability, except for payments made under workmen's compensation acts for personal injuries or sickness.

(e) "Date the major disaster began" means the date a major disaster first occurred, as specified in the understanding between the Federal Emergency Management Agency and the Governor of the State in which the major disaster occurred.

(f) "Disaster Assistance Period" means the period beginning with the first week following the date the major disaster began, and ending with (the 23rd week subsequent to the date the major disaster was declared.

(h) "Federal Coordinating Officer" means the official appointed pursuant to section 302 of The Robert T. Stafford

Disaster Relief and Emergency Assistance Act, to operate in the affected major disaster area.

(k) "Major disaster" means a major disaster as declared by the President pursuant to section 401 of The Robert T. Stafford Disaster Relief and Emergency Assistance Act.

(l) "Major disaster area" means the area identified as eligible for Federal assistance by the Federal Emergency Management Agency, pursuant to a Presidential declaration of a major disaster.

(p) "State" means any State of the United States, the District of Columbia, the Commonwealth of Puerto Rico, the United States Virgin Islands, the Territory of Guam, American Samoa, and the Trust Territory of the Pacific Islands.

(q) "State agency" means—
(1) In all States except the Territory of Guam, American Samoa, and the Trust Territory of the Pacific Islands, the agency administering the State law; and
(2) In the Territory of Guam, American Samoa, and the Trust Territory of the Pacific Islands, the agency designated in the Agreement entered into by the State.

(r)(1) "State law" means, with respect to—

(i) The States of the United States, the District of Columbia, the Commonwealth of Puerto Rico, and the Virgin Islands, the unemployment compensation law of the State which has been approved under section 3304(a) of the Internal Revenue Code of 1986 (26 U.S.C. 3304(a)); and

(ii) The Territory of Guam, American Samoa, and the Trust Territory of the Pacific Islands, the Hawaii Employment Security Law.

6. Section 625.3 is revised to read as follows:

§ 625.3 Reemployment assistance.

(a) *State assistance.* Except as provided in paragraph (b) of this section, the applicable State shall provide, without reimbursement from any funds provided under the Act, reemployment assistance services under any other law administered by the State to individuals applying for DUA and all other individuals who are unemployed because of a major disaster. Such services shall include, but are not limited to, counseling, referrals to suitable work opportunities, and suitable training, to assist the individuals in obtaining reemployment in suitable positions as soon as possible.

the prior statute. However, the administration of the DUA Program with respect to any major disaster declared by the President prior to November 23, 1988, shall continue to be controlled by the regulations at 20 CFR part 625 that were in effect prior to the publication of the interim final rule in this document.

The significant DREA amendments to the Stafford Act affecting the DUA Program are:

Section 106(f)(1) of the DREA amends section 410(a) of the Stafford Act to provide that DUA is payable to an individual for a week of unemployment only if "the individual is not entitled to any other unemployment compensation (as that term is defined in section 85(b) of the Internal Revenue Code of 1986) or waiting period credit."

Section 106(f)(2) of the DREA amends section 410(a) of the Stafford Act to provide that Disaster Unemployment Assistance cannot be paid for any period longer than "28 weeks after the major disaster is declared."

Section 106(f)(3) of the DREA amends section 410(a) of the Stafford Act by repealing the provision that the DUA amount calculated and payable to an individual for a week of unemployment "shall be reduced by any amount of unemployment compensation or of private income protection insurance compensation available to such individual for such week of unemployment."

Section 106(f)(4) of the DREA amends section 410(b) of the Stafford Act to provide under subsection (b)(1) that "[a] State shall provide, without reimbursement from any funds provided under this Act, reemployment assistance services under any other law administered by the State to individuals receiving benefits under this section." Subsection (b)(2) provides that "[t]he President may provide [Federal] reemployment assistance services under other laws to individuals who are unemployed as a result of a major disaster and who reside in a State which does not provide such services."

Section 106(i) of the DREA amends Title IV of the Stafford Act by adding a new section, section 423. This section provides a right of appeal from any decision regarding "eligibility for, from, or amount of assistance" under Title IV, within 60 days after the date on which the applicant is notified of the award or denial of assistance. Subsection (b) of this new section requires that a decision regarding such an appeal will be rendered within 90 days after the date on which the Federal official designated to administer such appeals receives notice of the appeal. Subsection (c) of this new section requires the President

to issue rules which provide for the fair and impartial consideration of these appeals.

Section 103(d) of the DREA amends paragraphs 3 and 4 of Section 102 of the Stafford Act to delete "the Canal Zone" from the definitions of "United States" and "State".

In addition, since publication of 20 CFR part 625 in 1977, several amendments (discussed below) have been made to Title III of the Social Security Act (hereafter "SSA") (42 U.S.C. 501 *et seq.*) and the Federal Unemployment Tax Act (hereafter "FUTA") (26 U.S.C. 3301 *et seq.*). These amendments relate to requirements that each State unemployment compensation law must contain in order for covered employers within the State to receive credits against the Federal unemployment tax imposed under Section 3301, FUTA, and for the certification of payment of granted funds to the State under Title III of the SSA. This necessitates amending part 625 to reflect the current statutes.

Other changes and technical corrections are made throughout part 625 to update the regulations and to conform the words and phrases to changes made in the Stafford Act. Appendices are added to include the Secretary of Labor's standards on claim filing, claim determinations, and fraud and overpayment detection.

Changes in the Regulations Due to the Stafford Act

The following changes in the regulations are required by the amendments in the Stafford Act:

The DREA was renamed "The Robert T. Stafford Disaster Relief and Emergency Assistance Act" by Section 102(a) of the DREA. Conforming changes have been made, where required, throughout the regulations.

Section 106(e) of the DREA redesignated Section 407 of the Stafford Act, which establishes the DUA Program, as section 410. Therefore, paragraphs (a), (b) and (c) of § 625.1, which set forth the purpose of the Stafford Act and rules of construction, are revised to reflect the new citations as well as the new title of the Act. Paragraphs (e), (b) and (c) are also revised to reflect the citation of new section 423 of the Act as discussed in the next paragraph below.

The definition of "Act" in § 625.2 has been revised to incorporate the revised citation to sections 410 and to add section 423 to this definition since that section, which makes provision for appeals of assistance decisions, including those under the DUA Program,

was added to the Stafford Act by section 102(f) of the DREA.

The definition of "Disaster Assistance Period" under § 625.2(f) is revised to reflect the amendment to section 410(a) of the Stafford Act by section 106(f)(2) of the DREA. Under the amended section 410(a), disaster unemployment assistance may not be paid for any period longer than "28 weeks after the major disaster is declared." In addition, this definition is revised to remove authority to prescribe a shorter DUA period. The definition of a "Week" under § 625.2(v) remains unchanged.

Section 625.2(h) defining "Federal Coordinating Officer" is revised to reflect the new name of the Stafford Act.

Paragraph (k) of § 625.2 defining "Major disaster" is revised to reflect the new name of the Stafford Act and the statutory citation.

Sections 625.2(p), (q), and (r) are modified by deleting the Canal Zone as a "State" for purposes of the DUA Program. This definition follows the definition of "State" in the Stafford Act as amended by section 103(d) of the DREA. Also the references to the Canal Zone are deleted from §§ 625.6 and 625.12.

Section 625.3 is expanded to indicate that a State shall provide, without reimbursement from any funds provided under this Act, reemployment assistance services under any other law administered by the State to individuals receiving DUA. For "States" that do not offer any reemployment services, the Department of Labor, in consultation with the Federal Emergency Management Agency, will determine what services or programs are needed, and if any available Federal programs of reemployment services can be implemented in that jurisdiction.

Section 625.4 is modified by adding a paragraph (f) to provide that an individual shall not be eligible for DUA for any week the individual is eligible to receive any other unemployment compensation or is eligible for a waiting period credit for each week under any other unemployment compensation program. Also, § 625.13(a) is modified to delete the provision that unemployment compensation is deductible from weekly DUA payable. The term "unemployment compensation" is as it is defined in section 85(b) of the Internal Revenue Code of 1986 and further defined in § 625.2(d) of this part.

These changes mean that DUA is not payable for any week the individual is eligible for a payment of unemployment compensation or waiting period credit, or is ineligible because the individual (1) has excessive disqualifying income, (2)

is employed or is not able to work or available for work, or (3) for any other reason is ineligible for unemployment compensation or waiting period credit but otherwise would be entitled but for such ineligible reason with two exceptions. DUA can be paid (1) when an individual is under disqualification for unemployment compensation for a cause that occurred before the individual's disaster related separation from employment, even though the individual has not purged the disqualification, and (2) when there is a disqualification or denial of unemployment compensation because of the individual's disaster related reason for separation and/or the individual does not meet the eligibility requirements for unemployment compensation because of becoming unemployed due to the disaster.

Also, this change in § 625.4 does not affect § 625.5(e), which defines five categories of unemployed workers whose unemployment is caused by a disaster, including the one in which the individual cannot work because of an injury caused as a direct result of the major disaster. Such workers may not meet the eligibility requirements for unemployment insurance but would meet them for DUA.

Section 625.10 is changed significantly. The period for filing an appeal from a determination or redetermination is changed from the amount of time permitted by the applicable State unemployment compensation law to 60 days. The fair and impartial hearing and decision will continue to be administered by State unemployment compensation hearing officers except in Guam, American Samoa, and the Trust Territory of the Pacific Islands. However, it will be necessary for all DUA appeals to be decided by State hearing officers within 30 days of receipt of the appeal. The applicant will be allowed to appeal the State hearing officer's decision to the appropriate Regional Administrator within 15 days after the hearing officer's decision is delivered or mailed to the individual. The Regional Administrator will have 45 days to obtain the record from the State and to issue a decision on the appeal, but the decision by the Regional Administrator must in every case be issued within 90 days after the day on which the applicant's original appeal was received by the State agency, as is required by section 423(b) of the Stafford Act.

The savings clause at § 625.20 is revised to replace the date October 18, 1977 with the date November 23, 1988, the effective date of the DREA

amendments. Any DUA Program operations for a major disaster declared prior to that date are subject to the DREA and regulations in effect prior to that date.

Changes in the Regulations Due to Other Factors

The following changes in the regulations are required due to amendments to the SSA and FUTA, deletion of obsolete references and citations, and other technical corrections.

The definition of "compensation" contained in § 625.2(d) is revised to delete references to types of "compensation" no longer in existence because the authorizing statute expired or was repealed by the State. These references are "Emergency compensation," "Special Unemployment Assistance," and the "Hawaii Agricultural Unemployment Compensation Law." The definition is also revised to incorporate the definition of "unemployment compensation" as that term is defined in section 85(b) of the Internal Revenue Code of 1986. As defined in Section 85(b), the term "unemployment compensation" means any amount received under a law of the United States or of a State which is in the nature of unemployment compensation. Under the cited provision of the Internal Revenue Code, the Internal Revenue Service (IRS) has the responsibility for implementing the provision, which they have defined in their regulations at 26 CFR 1.85-1. The Department is following the provisions of the IRS regulations in this definition as directed by section 410(a) of the Stafford Act.

"Compensation", as defined, includes a definition of "Federal supplementary compensation" in addition to other types of payments previously defined. Also, in § 625.2(d)(5) a definition is added for "disability payments" which are considered "in the nature of unemployment compensation" by the IRS in their regulations at 26 CFR 1.85-1(b)(1)(ii).

This definition at § 625.2(d)(5) provides that "disability payments" made pursuant to a governmental program as a substitute for cash unemployment benefits to an individual who is ineligible for unemployment benefits solely because of the disability or sickness are "in the nature of unemployment compensation". Usually these disability or sickness payments are paid in the same weekly amount and for the same period as the unemployment benefits to which the unemployed worker would have been entitled based on prior employment and wages. Therefore DUA is not payable to

individuals entitled to "disability payments".

The definition applies to certain types of temporary disability or sickness payments where State laws provide for such payments and to sickness payments made under the Railroad Unemployment Insurance Act (45 U.S.C. 352). Such payments are considered "in the nature of unemployment compensation" unless the State has a ruling from the IRS that the payments are not "unemployment compensation". In addition, the IRS regulation at 26 CFR 1.85-1(b)(1)(ii) provides that amounts received under workmen's compensation acts as compensation for personal injuries or sickness are not amounts "in the nature of unemployment compensation".

The IRS regulation (26 CFR 1.85-1(b)(1)(iii)) also provides that if a governmental unemployment compensation program is funded in part by an employee's contribution, which is not deductible by the employee from Federal income tax liability, an amount paid to such employee is not considered unemployment compensation until an amount equal to the total nondeductible contributions paid by the employee to such program has been paid to the employee. Therefore, unless States have a ruling from the IRS that such employee contributions and related payments are not "unemployment compensation" or other specific provisions of law that would exclude the employee contributions from the definition, those States that require such contributions must consider any payments made as being "unemployment compensation", hence, an individual is not eligible for payments of DUA. This provision is applicable to those States that require employer contributions for "regular compensation" and/or "disability payments". § 625.2(d), as revised, includes this provision.

Conversely, for those types of payments not defined as "unemployment compensation", in order to prevent duplication of benefits under section 312 of the Stafford Act, § 625.13(a)(1), as renumbered, is revised to reflect that DUA must be reduced by any benefit or insurance proceed from any source not defined as "compensation" under § 625.2(d) for loss of wages due to illness or disability. Also, this means workman's compensation payments, any State "disability payments" not considered "compensation", any employee contributed unemployment compensation payments not considered "compensation" or any private plan payments must be deducted from DUA

Disaster Relief

Friday
January 5, 1990

Part II

Department of Labor

Employment and Training Administration

20 CFR Part 625

**Disaster Unemployment Assistance
Program; Interim Final Rule and Request
for Comments**

DEPARTMENT OF LABOR

Employment and Training
Administration

20 CFR PART 625

RIN 1205-AA50

Disaster Unemployment Assistance
Program; Interim Final Rule and
Request for CommentsAGENCY: Employment and Training
Administration, Labor.ACTION: Interim final rule; request for
comments.

SUMMARY: The Employment and Training Administration of the Department of Labor is issuing this interim final rule implementing the statutory amendments affecting the Disaster Unemployment Assistance Program. These amendments made significant changes in the statute governing the program of unemployment assistance to people unemployed because of a major disaster. Essential changes to the regulations are issued in this interim final rule because the statutory changes in the program became effective on November 23, 1988. To provide an opportunity for public participation in this rulemaking, a comment period is provided, and a final rule will be published after taking into account any comments that are received.

DATE: *Effective date:* The effective date of this interim final rule is January 5, 1990.

Comment date: Written comments on this interim final rule must be received in the Department of Labor on or before February 5, 1990.

ADDRESS: Written comments on this interim final rule may be mailed or delivered to Mary Ann Wyrach, Director, Unemployment Insurance Service, Employment and Training Administration, U.S. Department of Labor, Room 54231, 200 Constitution Avenue NW., Washington, DC 20210.

All comments received will be available for public inspection during normal business hours in Room 54231 at the above address.

FOR FURTHER INFORMATION CONTACT: Barbara Ann Farmer, Director, Office of Program Management in the Unemployment Insurance Service, Employment and Training Administration, U.S. Department of Labor, 200 Constitution Avenue, NW., Washington, DC 20210; Telephone (202) 635-0810 (this is not a toll-free number).
SUPPLEMENTARY INFORMATION: Section 407 of the Disaster Relief Act of 1974

(hereafter the DRA) set forth the amended outlines of the Disaster Unemployment Assistance Program (hereafter the "DUA Program"). The President was authorized by section 407 to provide to any individual unemployed as a result of a major disaster declared by the President under the Act "such benefit assistance as he deems appropriate while such individual is unemployed." Other terms of section 407 provided that disaster unemployment assistance (hereafter "DUA") was to be furnished to individuals for no longer than one year after the major disaster was declared; and for any week of unemployment a DUA payment was not to exceed the maximum weekly benefit amount authorized under the unemployment compensation law of the State in which the disaster occurred; and any DUA payment was to be reduced by the amount of any unemployment compensation or private income protection insurance compensation available to the individual for the same week of unemployment. The President was directed by section 407 to provide DUA through agreements with States which, in his judgment, had an adequate system for administering the DUA Program through existing State agencies.

Pursuant to a delegation of authority to the Secretary of Labor, United States Department of Labor, initially from the Secretary of Housing and Urban Development, and subsequently from the Director of the Federal Emergency Management Agency (FEMA), the DUA Program authorized by section 407 of the DRA was implemented in regulations promulgated by the Department of Labor and published at part 625 of title 20 of the Code of Federal Regulations (20 CFR part 625).

Title I of Public Law 100-707, approved on November 23, 1988, is cited as *The Disaster Relief and Emergency Assistance Amendments of 1988* (hereafter the "DREA"). In Title I extensive amendments were made to the Disaster Relief Act of 1974. The short title of the Act was changed to *The Robert T. Stafford Disaster Relief and Emergency Assistance Act* (hereafter the "Stafford Act"); section 407 was redesignated as section 410; significant changes were made in redesignated section 410; and other changes and provisions were made affecting the DUA Program.

Section 113 of Pub. L. 100-707 directs that regulations implementing the amended Stafford Act shall be issued no later than the 180th day after date of enactment (that is, November 23, 1988). Section 112 of Pub. L. 100-707 provides that the amendments in Title I "shall not

affect the administration of any assistance for a major disaster * * * declared by the President before the date of the enactment of this Act."

In view of the application of the amended Stafford Act to major disasters declared on and after November 23, 1988, and the statutory direction to issue regulations not later than the 180th day after November 23, 1988, it is necessary to issue with this document an interim final rule amending 20 CFR part 625, to become effective upon publication in the Federal Register and with a comment period following such publication.

Since the amendments to section 410 took effect on November 23, 1988, and major disaster declarations were issued by the President soon after enactment, and it has been necessary to apply the amendments to section 410 to such disasters, the Department has determined, pursuant to 5 U.S.C. 553(b)(3), that good cause exists for publishing the amendments to 20 CFR part 625 as an interim final rule, with a post-publication comment period, because a pre-publication comment period is impracticable and contrary to the public interest. For the same reasons the Department has determined, pursuant to 5 U.S.C. 553(d), that good cause exists for making the amendments to 20 CFR part 625 effective upon publication in the Federal Register.

Further, in order to effectuate the amendments to the DUA Program in a timely fashion, pending the publication of the interim final rule in this document the Department has issued Unemployment Insurance Program Letter No. (hereafter "UIPL") 16-89 to the States, and has entered into modified agreements with the States to implement the amendments. UIPL 16-89 sets forth operating instructions to the States for implementing the amended DUA Program, and was published in the Federal Register on March 24, 1989, at 54 FR 12295. Change 1 to UIPL 16-89, containing further operating instructions, was published in the Federal Register on June 23, 1989, at 54 FR 26448.

The provisions of section 410 of the Stafford Act supersede the prior statute and regulations for the DUA Program, to the extent that the provisions of the Stafford Act are inconsistent with the prior statute and regulations. Therefore, the provisions of the Stafford Act must be given effect as of their effective date, as is required by section 112 of the Stafford Act. In no case may any determination of entitlement to DUA Program benefits that are affected by the Stafford Act be based upon the prior statute or the regulations implementing

(b) *Federal assistance.* In the case of American Samoa and the Trust Territory of the Pacific Islands, the Department of Labor, in consultation with the Federal Emergency Management Agency, will determine what reemployment services are needed by DUA applicants, and if any available Federal programs of reemployment assistance services can be implemented in that jurisdiction.

7. Section 825.4 is amended by removing the word "and" at the end of paragraph (g) removing the period at the end of paragraph (h) and inserting in lieu thereof: "and", and by adding a new paragraph (i) to read as follows:

§ 825.4 Eligibility requirements for Disaster Unemployment Assistance.

(i) The individual is not eligible for compensation (as defined in § 825.2(d)) or for waiting period credit for such week under any other Federal or State law, except that an individual determined ineligible because of the receipt of disqualifying income shall be considered eligible for such compensation or waiting period credit. An individual shall be considered ineligible for compensation or waiting period credit (and thus potentially eligible for DUA) if the individual is under a disqualification for a cause that occurred prior to the individual's unemployment due to the disaster, or for any other reason is ineligible for compensation or waiting period credit as a direct result of the major disaster.

8. Paragraphs (a)(1) and (b)(1) of § 825.5 are revised to read as follows:

§ 825.5 Unemployment caused by a major disaster.

(a) Unemployed worker.

(1) The individual has a "week of unemployment" as defined in § 825.2(w)(1) during the week immediately following the "date the major disaster began" as defined in § 825.2(e), and such unemployment is a direct result of the major disaster; or

(b) Unemployed self-employed individual.

(1) The individual has a "week of unemployment" as defined in § 825.2(w)(2) during the week immediately following the "date the major disaster began" as defined in § 825.2(e), and such unemployment is a direct result of the major disaster; or

9. Section 825.6 is amended by revising paragraphs (a)(1) and (a)(4), (b) and (c) to read as follows:

§ 825.6 Disaster Unemployment Assistance: Weekly amount.

(a) *States of the United States.* (1) In all States except the Territory of Guam, American Samoa, and the Trust Territory of the Pacific Islands, the amount of DUA payable to an unemployed worker or unemployed self-employed individual for a week of total unemployment shall be the weekly amount of compensation the individual would have been paid as regular compensation, as computed under the provisions of the applicable State law for a week of total unemployment, but in no event shall such amount be in excess of the maximum amount of regular compensation authorized under the applicable State law for that week. Provided, that, except as provided in paragraph (a)(2) and Paragraph (a)(3) of this section, in computing an individual's weekly amount of DUA, the base period, qualifying employment and wage requirements, and benefit formula of the applicable State law shall be applied; and for the purpose of this section employment, wages, and self-employment which are not covered by the applicable State law shall be treated in the same manner and with the same effect as covered employment and wages, but shall not include employment or self-employment, or wages earned or paid for employment or self-employment, which is contrary to or prohibited by any Federal law.

(4) If under paragraph (a)(1) or paragraph (a)(3) of this section it is not possible to compute the weekly amount for an unemployed self-employed individual because such individual has no net earnings from services performed in self-employment, the weekly amount payable to such individual shall be the minimum weekly amount of regular compensation payable under the applicable State law.

(b) *Guam.* In the Territory of Guam the amount of DUA payable to an unemployed worker or unemployed self-employed individual for a week of total unemployment shall be the average of the payments of regular compensation made under all State laws referred to in § 825.2(r)(1)(i) for weeks of total unemployment in the first four of the last five completed calendar quarters immediately preceding the quarter in which the major disaster began. The weekly amount so determined, if not an even dollar amount, shall be rounded to the next higher dollar.

(c) *American Samoa and the Trust Territory of the Pacific Islands.* In American Samoa and the Trust Territory

of the Pacific Islands the amount of DUA payable to an unemployed worker or unemployed self-employed individual for a week of total unemployment shall be the amount agreed upon by the Regional Administrator, Employment and Training Administration, for Region IX (San Francisco), and the Federal Coordinating Officer, which shall approximate 50 percent of the area-wide average of the weekly wages paid to individuals in the major disaster area in the quarter immediately preceding the quarter in which the major disaster began. The weekly amount so determined, if not an even dollar amount, shall be rounded to the next higher dollar.

10. Section 825.8(f)(1) is revised to read as follows:

§ 825.8 Applications for Disaster Unemployment Assistance.

(f) *Procedural requirements.* (1) The procedures for reporting and filing applications for DUA shall be consistent with this part, and with the Secretary's "Standard for Claim Filing, Claimant Reporting, Job Finding and Employment Services," *Employment Security Manual*, Part V, sections 8000 et seq. (Appendix A of this part), insofar as such standard is not inconsistent with this part.

11. Section 825.9(f) is revised to read as follows:

§ 825.9 Determinations of entitlement: notices to individual.

(f) *Secretary's Standard.* The procedures for making determinations and redeterminations, and furnishing written notices of determinations, redeterminations, and rights of appeal to individuals applying for DUA, shall be consistent with this part and with the Secretary's "Standard for Claim Determinations—Separation Information," *Employment Security Manual*, Part V, sections 8010 et seq. (Appendix B of this part).

12. In § 825.10, paragraph (b) is removed, paragraphs (c), (d), (e), and (f) are redesignated paragraphs (b), (c), (d), and (e), and paragraph (a) and newly redesignated paragraphs (b)(1), (c)(1), (c)(3) through (c)(6), (d)(1), (d)(2), (d)(4), (d)(6), and (a)(1) are revised to read as follows:

§ 825.10 Appeal and review.

(a) *States of the United States.* (1) Any determination or redetermination made

pursuant to § 625.8, by the State agency of a State (other than the State agency of the Territory of Guam, American Samoa, or the Trust Territory of the Pacific Islands) may be appealed by the applicant in accordance with the applicable State law to the first-stage administrative appellate authority in the same manner and to the same extent as a determination or redetermination of a right to regular compensation may be appealed under the applicable State law, except that the period for appealing shall be 90 days from the date the determination or redetermination is issued or mailed instead of the appeal period provided for in the applicable State law. Any decision on a DUA first-stage appeal must be made and issued within 30 days after receipt of the appeal by the State.

(2) Notice of the decision on appeal, and the reasons therefor, shall be given to the individual by delivering the notice to each individual personally or by mailing it to the individual's last known address, whichever is most expeditious. The decision shall contain information as to the individual's right to review of the decision by the appropriate Regional Administrator, Employment and Training Administration, if requested within 15 days after the decision was mailed or delivered in person to the individual. The notice will include the manner of requesting such review, and the complete address of the Regional Administrator. Notice of the decision on appeal shall be given also to the State agency (with the same notice of right to review) and to the appropriate Regional Administrator.

(b) *Guam, American Samoa, and the Trust Territory of the Pacific Islands.* (1) In the case of an appeal by an individual from a determination or redetermination by the State agency of the Territory of Guam, American Samoa, or the Trust Territory of the Pacific Islands, the individual shall be entitled to a hearing and decision in accordance with § 625.30 of this part.

(c) *Review by Regional Administrator.* (1) The appropriate Regional Administrator, Employment and Training Administration, upon request for review by an applicant or the State agency shall, or upon the Regional Administrator's own motion may, review a decision on appeal issued pursuant to paragraph (a) or (b) of this section.

(3)(i) A request for review by an individual may be filed with the appropriate State agency, which shall forward the request to the appropriate

Regional Administrator, Employment and Training Administration, or may be filed directly with the appropriate Regional Administrator.

(ii) A request for review by a State agency shall be filed with the appropriate Regional Administrator, and a copy shall be served on the individual by delivery to the individual personally or by mail to the individual's last known address.

(iii) When a Regional Administrator undertakes a review of a decision on the Regional Administrator's own motion, notice thereof shall be served promptly on the individual and the State agency.

(iv) Whenever review by a Regional Administrator is undertaken pursuant to an appeal or on the Regional Administrator's own motion, the State agency shall promptly forward to the Regional Administrator the entire record of the case.

(v) Where service on the individual is required by paragraph (c)(3)(i) of this section, adequate proof of service shall be furnished for the record before the Regional Administrator, and be a condition of the Regional Administrator undertaking review pursuant to this paragraph.

(4) The decision of the Regional Administrator on review shall be rendered promptly, and not later than the earlier of—

(i) 45 days after the appeal is received or is undertaken by the Regional Administrator, or

(ii) 90 days from the date the individual's appeal from the determination or redetermination was received by the State agency.

(5) Notice of the Regional Administrator's decision shall be mailed promptly to the last known address of the individual, to the State agency of the applicable State, and to the Director, Unemployment Insurance Service. The decision of the Regional Administrator shall be the final decision under the Act and this part, unless there is further review by the Assistant Secretary as provided in paragraph (d) of this section.

(d) *Further review by the Assistant Secretary.* (1) The Assistant Secretary for Employment and Training on his own motion may review any decision by a Regional Administrator issued pursuant to paragraph (c) of this section.

(2) Notice of a motion for review by the Assistant Secretary shall be given to the applicant, the State agency of the applicable State, the appropriate Regional Administrator, and the Director, Unemployment Insurance Service.

(4) Review by the Assistant Secretary shall be solely on the record in the case any other written contentions or evidence requested by the Assistant Secretary, and any further evidence or arguments offered by the individual, the State agency, the Regional Administrator, or the Director, Unemployment Insurance Service, which are mailed to the Assistant Secretary within 15 days after mailing the notice of motion for review.

(6) The decision of the Assistant Secretary shall be made promptly, and notice thereof shall be sent to the applicant, the State agency, the Regional Administrator, and the Director, Unemployment Insurance Service.

(e) *Procedural requirements.* (3) All decisions on first-stage appeals from determinations or redeterminations by the State agencies must be made within 30 days of the appeal; therefore, the Secretary's "Standard for Appeals Promptness-Unemployment Compensation" in Part 850 of this chapter shall not apply to the DUA program.

13. Paragraph (b) introductory text of § 625.12 is revised to read as follows:

§ 625.12 The applicable State for an individual.

(b) *Limitation.* DUA is payable to an individual only by an applicable State as determined pursuant to paragraph (a) of this section, and—

14. Section 625.13 is amended by removing paragraph (a)(1), and redesignating paragraphs (a)(2) through (a)(7) as paragraphs (a)(1) through (a)(6) and paragraph (a)(1), as redesignated, is revised to read as follows:

§ 625.13 Restrictions on entitlement; disqualification.

(a) *Income reductions.* . . .
(1) Any benefits or insurance proceed from any source not defined as "compensation" under § 625.2(d) for loss of wages due to illness or disability.

15. Section 625.14 is amended by revising paragraphs (b) and (c) to read as follows:

§ 625.14 Overpayments; disqualification for fraud.

(b) *Recovery by offset.* (1) The State agency shall recover, insofar as is possible, the amount of any outstanding overpayment of DUA made to the

individual by the State, by deductions from any DUA payable to the individual under the Act and this part, or from any compensation payable to the individual under any Federal unemployment compensation law administered by the State agency, or from any assistance or allowance payable to the individual with respect to unemployment under any other Federal law administered by the State agency.

(2) The State agency shall also recover, insofar as possible, the amount of any outstanding overpayment of DUA made to the individual by another State, by deductions from any DUA payable by the State agency to the individual under the Act and this part, or from any compensation payable to the individual under any Federal unemployment compensation law administered by the State agency, or from any assistance or allowance payable to the individual with respect to unemployment under any other Federal law administered by the State agency.

(3) If the State has in effect an agreement to implement the cross-program offset provisions of section 303(g)(2) of the Social Security Act (42 U.S.C. 503(g)(2)), the State shall apply the provisions of such agreement to the recovery of outstanding DUA overpayments.

(b) *Fraud detection and prevention.* Provisions in the procedures of each State with respect to detection and prevention of fraudulent overpayments of DUA shall be, as a minimum, commensurate with the procedures adopted by the State with respect to regular compensation and consistent with the Secretary's "Standard for Fraud and Overpayment Detection," *Employment Security Manual, Part V, sections 7510 et seq.* (Appendix C of this part).

§ 625.20 (Amended)

16. In § 625.20, remove the date "October 10, 1977" and insert, in its place, the date "November 23, 1988".

17. New § 625.30 is added as follows:

§ 625.30 Appeal Procedures for Guam, American Samoa, and the Trust Territory of the Pacific Islands.

(a) *Designation of referees.* The Director of the Unemployment Insurance Service shall designate a referee of a State agency to hear and decide appeals under this section from determinations and redeterminations by the State agencies of the Territory of Guam,

American Samoa, and the Trust Territory of the Pacific Islands.

(b) *Appeals to referees.* (1) A DUA applicant may appeal from a determination or redetermination issued by the State agency of the Territory of Guam, American Samoa, or the Trust Territory of the Pacific Islands within 60 days after the mailing of notice and a copy of such determination or redetermination to such applicant's last known address, or in the absence of mailing within 60 days after delivery in person thereof to such applicant. The appeal shall be in writing and may be filed with any office of the State agency.

(2) Notice that an appeal has been filed may be given or mailed, in the discretion of the referee, to any person who has offered or is believed to have evidence with respect to the claim.

(3) An appeal shall be promptly scheduled and heard, in order that a decision on the appeal can be issued within 30 days after receipt of the appeal by the State agency. Written notice of hearing, specifying the time and place thereof and those questions known to be in dispute, shall be given or mailed to the applicant, the State agency, and any person who has offered or is believed to have evidence with respect to the claim 7 days or more before the hearing, except that a shorter notice period may be used with the consent of the applicant.

(c) *Conduct of hearings.* Hearings before the referee shall be informal, fair, and impartial, and shall be conducted in such manner as may be best suited to determine the DUA applicants' right to compensation. Hearings shall be open to the public unless sufficient cause for a closed hearing is shown. The referee shall open a hearing by ascertaining and summarizing the issue or issues involved in the appeal. The applicant may examine and cross-examine witnesses, inspect documents, and explain or rebut any evidence. An opportunity to present argument shall be afforded such applicant, and such argument shall be made part of the record. The referee shall give such applicant, if not represented by counsel or other representative, every assistance that does not interfere with the impartial discharge of the referee's duties. The referee may examine such applicant and other witnesses to such extent as the referee deems necessary. Any issue involved in the claim shall be considered and passed upon even though such issue was not set forth as a ground of appeal.

(d) *Evidence.* Oral or written evidence of any nature, whether or not conforming to the legal rules of

evidence, may be accepted. Any official record of the State agency, including reports submitted in connection with administration of the DUA program, may be included in the record if the applicant is given an opportunity to examine and rebut the same. A written statement under oath or affirmation may be accepted when it appears impossible or unduly burdensome to require the attendance of a witness, but a DUA applicant adversely affected by such a statement must be given the opportunity to examine such statement, to comment on or rebut any or all portions thereof, and whenever possible to cross-examine a witness whose testimony has been introduced in written form by submitting written questions to be answered in writing.

(e) *Record.* All oral testimony before the referee shall be taken under oath or affirmation and a transcript thereof shall be made and kept. Such transcript together with all exhibits, papers, and requests filed in the proceeding shall constitute the record for decision.

(f) *Withdrawal of appeal.* A DUA applicant who has filed an appeal may withdraw such appeal with the approval of the referee.

(g) *Nonappearance of DUA applicant.* Failure of a DUA applicant to appear at a hearing shall not result in a decision being automatically rendered against such applicant. The referee shall render a decision on the basis of whatever evidence is properly before him/her unless there appears to be a good reason for continuing the hearing. An applicant who fails to appear at a hearing with respect to his/her appeal may within seven days thereafter petition for a reopening of the hearing. Such petition shall be granted if it appears to the referee that such applicant has shown good cause for his/her failure to attend.

(h) *Notice of referee's decision and further review.* (1) *Decision.* A copy of the referee's decision, which shall include findings and conclusions, shall promptly be given or mailed to the applicant, the State agency, and to the Regional Administrator, Employment and Training Administration, for Region IX (San Francisco). The decision of the referee shall be accompanied by an explanation of the right of such applicant or State agency to request review by the Regional Administrator and the time and manner in which such review may be instituted, as provided in paragraph (a)(2) of § 625.10.

(2) *Time limit for decision.* A decision on an appeal to a referee under this section shall be made and issued by the

referee not later than 30 days after receipt of the appeal by the State agency.

(3) *Further review.* Further review by the Regional Administrator or the Assistant Secretary with respect to an appeal under this section shall be in accordance with paragraphs (c) and (d) of § 625.10.

(5) *Consolidation of appeals.* The referee may consolidate appeals and conduct joint hearings thereon where the same or substantially similar evidence is relevant and material to the matters in issue. Reasonable notice of consolidation and the time and place of hearing shall be given or mailed to the applicants or their representatives, the State agency, and to persons who have offered or are believed to have evidence with respect to the DUA claims.

(f) *Representation.* A DUA applicant may be represented by counsel or other representative in any proceedings before the referee or the Regional Administrator. Any such representative may appear at any hearing or take any other action which such applicant may take under this part. The referee, for cause, may bar any person from representing an applicant, in which event such action shall be set forth in the record. No representative shall charge an applicant more than an amount fixed by the referee for representing the applicant in any proceeding under this section.

(k) *Postponement, continuance, and adjournment of hearings.* A hearing before the referee shall be postponed, continued, or adjourned when such action is necessary to afford a DUA applicant reasonable opportunity for a fair hearing. In such case notice of the subsequent hearing shall be given to any person who received notice of the prior hearing.

(l) *Information from agency records.* Information shall be available to a DUA applicant, either from the records of the State agency or as obtained in any proceeding herein provided for, to the extent necessary for proper presentation of his/her case. All requests for information shall state the nature of the information desired as clearly as possible and shall be in writing unless made at a hearing.

(m) *Filing of decisions.* Copies of all decisions of the referee shall be kept on file at his/her office or agency for at least 3 years.

18. Add new Appendixes A through C to part 625 to read as follows:

Appendix "A" to part 625—Standard for Claim Filing, Claimant Reporting, Job Finding, and Employment Services

Employment Security Manual (Part V, Sections 8000-8004)

8000 Standard for Claim Filing, Claimant Reporting, Job Finding, and Employment Services

A. *Federal law requirements.* Section 3304(a)(1) of the Federal Unemployment Tax Act and section 303(a)(2) of the Social Security Act require that a State law provide for: "Payment of unemployment compensation solely through public employment offices or such other agencies as the Secretary may approve."

Section 3304(a)(4) of the Federal Unemployment Tax Act and section 303(a)(5) of the Social Security Act require that a State law provide for: "Expenditure of all money withdrawn from an unemployment fund of such State, in the payment of unemployment compensation."

Section 303(a)(1) of the Social Security Act requires that the State law provide for: "Such methods of administration . . . as are found by the Secretary to be reasonably calculated to insure full payment of unemployment compensation when due."

B. *Secretary's interpretation of federal law requirements:* 1. The Secretary interprets section 3304(a)(1) of the Federal Unemployment Tax Act and section 303(a)(2) of the Social Security Act to require that a State law provide for payment of unemployment compensation solely through public employment offices or claims offices administered by the State employment security agency if such agency provides for such coordination in the operations of its public employment offices and claims offices as will insure (a) the payment of benefits only to individuals who are unemployed and who are able to work and available for work, and (b) that individuals claiming unemployment compensation (claimants) are afforded such placement and other employment services as are necessary and appropriate to return them to suitable work as soon as possible.

2. The Secretary interprets all the above sections to require that a State law provide for: a. Such contact by claimants with public employment offices or claims offices or both, (1) as will reasonably insure the payment of unemployment compensation only to individuals who are unemployed and who are able to work and available for work, and (2) that claimants are afforded such placement and other employment services as are necessary and appropriate to facilitate their return to suitable work as soon as possible; and b. Methods of administration which do not unreasonably limit the opportunity of individuals to establish their right to unemployment compensation due under such State law.

8001 Claim Filing and Claimant Reporting Requirements Designed to Satisfy Secretary's Interpretation

A. *Claim filing—total or part-total unemployment:* 1. Individuals claiming unemployment compensation for total or part-total unemployment are required to file a claim weekly or biweekly, in person or by

mail, at a public employment office or a claims office (these terms include offices at itinerant points) as set forth below.

2. Except as provided in paragraph 3, a claimant is required to file in person: a. His new claim with respect to a benefit year, or his continued claim for a waiting week or for his first compensable week of unemployment in such year; and b. Any other claim, when requested to do so by the claims personnel at the office at which he files his claim(s) because questions about his right to benefits are raised by circumstances such as the following:

- (1) The conditions or circumstances of his separation from employment;
- (2) The claimant's answers to questions on mail claim(s) indicate that he may be unable to work or that there may be undue restrictions on his availability for work or that his search for work may be inadequate or that he may be disqualified;
- (3) The claimant's answers to questions on mail claims create uncertainty about his credibility or indicate a lack of understanding of the applicable requirements; or
- (4) The claimant's record shows that he has previously filed a fraudulent claim.

In such circumstances, the claimant is required to continue to file claims in person each week (or biweekly) until the State agency determines that filing claims in person is no longer required for the resolution of such questions.

3. A claimant must be permitted to file a claim by mail in any of the following circumstances: a. He is located in an area requiring the expenditure of an unreasonable amount of time or money in traveling to the nearest facility established by the State agency for filing claims in person; b. Conditions make it impracticable for the agency to take claims in person; c. He has returned to full-time work on or before the scheduled date for his filing a claim, unless the agency makes provision for in-person filing at a time and place that does not interfere with his employment; d. The agency finds that he has good cause for failing to file a claim in person.

4. A claimant who has been receiving benefits for partial unemployment may continue to file claims as if he were a partially unemployed worker for the first four consecutive weeks of total or part-total unemployment immediately following his period of partial unemployment so long as he remains attached to his regular employer.

B. *Claim filing—partial unemployment:* Each individual claiming unemployment compensation for a week (or other claim period) during which, because of lack of work, he is working less than his normal customary full-time hours for his regular employer and is earning less than the earnings limit provided in the State law, shall not be required to file a claim for such week or other claim period earlier than 2 weeks from the date that wages are paid for such claim period or, if a low earnings report is required by the State law, from the date the employer furnished such report to the individual. State agencies may permit claims for partial unemployment to be filed either in person or by mail, except that in the

circumstances set forth in section A 2, filing by mail must be permitted, and in the circumstances set forth in section A 3 b, filing in person may be required.

5002 Requirement for Job Finding, Placement, and Other Employment Services Designed to Satisfy Secretary's Interpretation

A. Claims personnel are required to assure that each claimant is doing what a reasonable individual in his circumstances would do to obtain suitable work.

B. In the discretion of the State agency: 1. The claims personnel are required to give each claimant such necessary and appropriate assistance as they reasonably can in finding suitable work and at their discretion determine when more complete placement and employment services are necessary and appropriate for a claimant; and if they determine more complete services are necessary and appropriate, the claims personnel are to refer him to employment service personnel in the public employment office in which he has been filing claim(s), or, if he has been filing in a claims office, in the public employment office most accessible to him; or

2. All placement and employment services are required to be afforded to each claimant by employment service personnel in the public employment office most accessible to him in which case the claims personnel in the office in which the claimant files his claim are to refer him to the employment service personnel when placement or other employment services are necessary and appropriate for him.

C. The personnel to whom the State agency assigns the responsibilities outlined in paragraph B above are required to give claimants such job-finding assistance, placement, and other employment services as are necessary and appropriate to facilitate their return to suitable work as soon as possible.

In some circumstances, no such services or only limited services may be required. For example, if a claimant is on a short-term temporary layoff with a fixed return date, the only service necessary and appropriate to be given to him during the period of the layoff is a referral to suitable temporary work if such work is being performed in the labor market area.

Similarly, claimants whose unemployment is caused by a labor dispute presumably will return to work with their employer as soon as the labor dispute is settled. They generally do not need services, nor do individuals in occupations where placement customarily is made by other nonfee charging placement facilities such as unions and professional associations.

Claimants who fall within the classes which ordinarily would require limited services or no services shall, if they request placement and employment services, be afforded such services as are necessary and appropriate for them to obtain suitable work or to achieve their reasonable employment goals.

On the other hand, a claimant who is permanently separated from his job is likely

to require some services. He may need only some direction in how to get a job; he may need placement services if he is in an occupation for which there is some demand in the labor market area; if his occupation is outdated, he may require counseling and referral to a suitable training course. The extent and character of the services to be given any particular claimant may change with the length of his unemployment and depend not only on his own circumstances and conditions, but also on the condition of the labor market in the area.

D. Claimants are required to report to employment service personnel, as directed, but such personnel and the claims personnel are required to so arrange and coordinate the contacts required of a claimant as not to place an unreasonable burden on him or unreasonably limit his opportunity to establish his rights to compensation. As a general rule, a claimant is not required to contact in person claims personnel or employment service personnel more frequently than once a week, unless he is directed to report more frequently for a specific service such as referral to a job or a training course or counseling which cannot be completed in one visit.

E. Employment service personnel are required to report promptly to claims personnel in the office in which the claimant files his claim(s): (1) his failure to apply for or accept work to which he was referred by such personnel or when known, by any other nonfee-charging placement facility such as a union or a professional association; and (2) any information which becomes available to it that may have a bearing on the claimant's ability to work or availability for work, or on the suitability of work to which he was referred or which was offered to him.

5004 Evaluation of Alternative State Provisions

If the State law provisions do not conform to the "suggested State law requirements" set forth in sections 5001 and 5002, but the State law contains alternative provisions, the Manpower Administrator, in collaboration with the State agency, will study the actual or anticipated effect of the alternative provisions. If the Manpower Administrator concludes that the alternative provisions satisfy the requirements of the Federal law as construed by the Secretary (see section 5000 B) he will so notify the State agency. If he does not so conclude, he will submit the matter to the Secretary. If the Secretary concludes that the alternative provisions satisfy such requirements, the State agency will be so notified. If the Secretary concludes that there is a question as to whether the alternative provisions satisfy such requirements, the State agency will be advised that unless the State law provisions are appropriately revised, a notice of hearing will be issued as required by the Code of Federal Regulations, title 20, section 601.5.

Appendix "B" to Part 825—Standard for Claim Determinations—Separation Information

Employment Security Manual (Part V, Sections 8010-8015)

8010-8015 Standard for Claim Determinations—Separation Information

8010 Federal Law Requirements. Section 303(a)(1) of the Social Security Act requires that a State law include provision for: "Such methods of administration . . . as are found by the Secretary to be reasonably calculated to insure full payment of unemployment compensation when due."

Section 303(a)(3) of the Social Security Act requires that a State law include provision for: "Opportunity for a fair hearing before an impartial tribunal, for all individuals whose claims for unemployment compensation are denied."

Section 3304(a)(4) of the Federal Unemployment Tax Act and section 303(a)(3) of the Social Security Act require that a State law include provision for: "Expenditure of all money withdrawn from an unemployment fund of such State, in the payment of unemployment compensation . . ."

Section 3308(b) of the Federal Unemployment Tax Act defines "compensation" as "cash benefits payable to individuals with respect to their unemployment."

8011 Secretary's Interpretation of Federal Law Requirements. The Secretary interprets the above sections to require that a State law include provisions which will insure that: A. Individuals who may be entitled to unemployment compensation are furnished such information as will reasonably afford them an opportunity to know, establish, and protect their rights under the unemployment compensation law of such State, and

B. The State agency obtains and records in time for the prompt determination and review of benefit claims such information as will reasonably insure the payment of benefits to individuals to whom benefits are due.

8012 Criteria for Review of State Law Conformity with Federal Requirements. In determining the conformity of a State law with the above requirements of the Federal Unemployment Tax Act and the Social Security Act as interpreted by the Secretary, the following criteria will be applied:

A. Is it required that individuals who may be entitled to unemployment compensation be furnished such information of their potential rights to benefits, including the manner and places of filing claims, the reasons for determinations, and their rights of appeal, as will insure them a reasonable opportunity to know, establish, and protect their rights under the law of the State?

B. Is the State agency required to obtain, in time for prompt determination of rights to benefits such information as will reasonably insure the payment of benefits to individuals to whom benefits are due?

C. Is the State agency required to keep records of the facts considered in reaching determinations of rights to benefits?

8013 Claim Determinations Requirements Designed To Meet Department of Labor Criteria.

A. Investigation of claims. The State agency is required to obtain promptly and prior to a determination of an individual's right to benefits, such facts pertaining thereto as will be sufficient reasonably to insure the payment of benefits when due.

This requirement embraces five separate elements:

1. It is the responsibility of the agency to take the initiative in the discovery of information. This responsibility may not be passed on to the claimant or the employer. In addition to the agency's own records, this information may be obtained from the worker, the employer, or other sources. If the information obtained in the first instance discloses no essential disagreement and provides a sufficient basis for a fair determination, no further investigation is necessary. If the information obtained from other sources differs essentially from that furnished by the claimant, the agency, in order to meet its responsibility, is required to inform the claimant of such information from other sources and to afford the claimant an opportunity to furnish any further facts he may have.

2. Evidentiary facts must be obtained as distinguished from ultimate facts or conclusions. That a worker was discharged for misconduct is an ultimate fact or conclusion; that he destroyed a machine upon which he was working is a primary or evidentiary fact, and the sort of fact that the requirement refers to.

3. The information obtained must be sufficient reasonably to insure the payment of benefits when due. In general, the investigation made by the agency must be complete enough to provide information upon which the agency may act with reasonable assurance that its decision is consistent with the unemployment compensation law. On the other hand, the investigation should not be so exhaustive and time-consuming as unduly to delay the payment of benefits and to result in excessive costs.

4. Information must be obtained promptly so that the payment of benefits is not unduly delayed.

5. If the State agency requires any particular evidence from the worker, it must give him a reasonable opportunity to obtain such evidence.

B. Recording of facts. The agency must keep a written record of the facts considered in reaching its determinations.

C. Determination notices

1. The agency must give each claimant a written notice of:

- a. Any monetary determination with respect to his benefit year;
- b. Any determination with respect to purging a disqualification if, under the State law, a condition or qualification must be satisfied with respect to each week of disqualification; but in lieu of giving written notice of each determination for each week in which it is determined that the claimant has met the requirements for purging, the agency may inform the claimant that he has purged the disqualification for a week by notation on his application identification card or otherwise in writing.

c. Any other determination which adversely affects his rights to benefits, except that written notice of determination need not be given with respect to:

(1) A week in a benefit year for which the claimant's weekly benefit amount is reduced in whole or in part by earnings if, the first time in the benefit year that there is such a reduction, he is required to be furnished a booklet or leaflet containing the information set forth below in paragraph 2 f (1). However, a written notice of determination is required if: (a) there is a dispute concerning the reduction with respect to any week (e.g., as to the amount computed as the appropriate reduction, etc.); or (b) there is a change in the State law (or in the application thereof) affecting the reduction; or

(2) Any week in a benefit year subsequent to the first week in such benefit year in which benefits were denied, or reduced in whole or in part for reasons other than earnings, if denial or reduction for such subsequent week is based on the same reason and the same facts as for the first week, and if written notice of determination is required to be given to the claimant with respect to such first week, and with such notice of determination, he is required to be given a booklet or pamphlet containing the information set forth below in paragraphs 2 f (2) and 2 h. However, a written notice of determination is required if: (a) there is a dispute concerning the denial or reduction of benefits with respect to such week; or (b) there is a change in the State law (or in the application thereof) affecting the denial or reduction; or (c) there is a change in the amount of the reduction except as to the balance covered by the last reduction in a series of reductions.

Note: This procedure may be applied to determinations made with respect to any subsequent weeks for the same reason and on the basis of the same facts: (a) that claimant is unable to work, unavailable for work, or is disqualified under the labor dispute provision; and (b) reducing claimant's weekly benefit amount because of income other than earnings or offset by reason of overpayment.

2. The agency must include in written notices of determinations furnished to claimants sufficient information to enable them to understand the determinations, the reasons therefor, and their rights to protest, request reconsideration, or appeal.

The written notice of monetary determination must contain the information specified in the following items (except h)

A determination "adversely affects" claimant's right to benefits if it (1) results in a denial to him of benefits (including a cancellation of benefits or wage credits or any reduction in whole or in part below the weekly or maximum amount established by his monetary determination) for any week or other period; or (2) denies credit for a waiting week or (3) applies any disqualification or penalty; or (4) determines that he has not satisfied a condition of eligibility, requalification for benefits, or purging a disqualification; or (5) determines that an overpayment has been made or orders repayment or recoupment of any sum paid to him; or (6) applies a previously determined overpayment, penalty, or order for repayment or recoupment; or (7) in any other way denies claimant a right to benefits under the State law.

unless an item is specifically not applicable. A written notice of any other determination must contain the information specified in as many of the following items as are necessary to enable the claimant to understand the determination and to inform him of his appeal rights. Information specifically applicable to the individual claimant must be contained in the written notice of determination. Information of general application such as (but not limited to) the explanation of benefits for partial unemployment, information as to deductions, seasonality factors, and information as to the manner and place of taking an appeal, extension of the appeal period, and where to obtain information and assistance may be contained in a booklet or leaflet which is given the claimant with his monetary determination.

a. **Base period wages.** The statement concerning base-period wages must be in sufficient detail to show the basis of computation of eligibility and weekly and maximum benefit amounts. (If maximum benefits are allowed, it may not be necessary to show details of earnings.)

b. **Employer name.** The name of the employer who reported the wages is necessary so that the worker may check the wage transcript and know whether it is correct. If the worker is given only the employer number, he may not be able to check the accuracy of the wage transcript.

c. **Explanation of benefit formula—weekly and maximum benefit amounts.** Sufficient information must be given the worker so that he will understand how his weekly benefit amount, including allowances for dependents, and his maximum benefit amount were figured. If benefits are computed by means of a table contained in the law, the table must be furnished with the notice of determination whether benefits are granted or denied.

The written notice of determination must show clearly the weekly benefit amount and the maximum potential benefits to which the claimant is entitled.

The notice to a claimant found ineligible by reason of insufficient earnings in the base period must inform him clearly of the reason for ineligibility. An explanation of the benefit formula contained in a booklet or pamphlet should be given to each claimant at or prior to the time he receives written notice of a monetary determination.

d. **Benefit year.** An explanation of what is meant by the benefit year and identification of the claimant's benefit year must be included in the notice of determination.

e. **Information as to benefits for partial unemployment.** There must be included either in the written notice of determination or in a booklet or pamphlet accompanying the notice an explanation of the claimant's rights to partial benefits for any week with respect to which he is working less than his normal customary full-time workweek because of lack of work and for which he earns less than his weekly benefit amount or weekly benefit amount plus earnings, whichever is provided by the State law. If the explanation is contained in the notice of determination, reference to the item in the notice in which

his weekly benefit amount is entered should be made.

f. Deductions from weekly benefits

(1) *Earnings.* Although written notice of determination deducting earnings from a claimant's weekly benefit amount is generally not required [see paragraph 1 (c)(1) above], where written notice of determination is required (or given) it shall set forth the amount of earnings, the method of computing the deduction in sufficient detail to enable the claimant to verify the accuracy of the deduction, and his right to protest, request redetermination, and appeal. Where a written notice of determination is given to the claimant because there has been a change in the State law or in the application of the law, an explanation of the change shall be included.

Where claimant is not required to receive a written notice of determination, he must be given a booklet or pamphlet the first time in his benefit year that there is a deduction for earnings which shall include the following information:

(a) The method of computing deductions for earnings in sufficient detail to enable the claimant to verify the accuracy of the deduction;

(b) That he will not automatically be given a written notice of determination for a week with respect to which there is a deduction for earnings (unless there is a dispute concerning the deduction with respect to a week or there has been a change in the State law or in the application of the law affecting the deduction) but that he may obtain such a written notice upon request; and

(c) A clear statement of his right to protest, request a redetermination, and appeal from any determination deducting earnings from his weekly benefit amount even though he does not automatically receive a written notice of determination; and if the State law requires written notice of determination in order to effectuate a protest, redetermination, or appeal, he must be so advised and advised also that he must request a written notice of determination before he takes any such action.

(2) Other deductions

(a) A written notice of determination is required with respect to the first week in claimant's benefit year in which there is a reduction from his benefits for a reason other than earnings. This notice must describe the deduction made from claimant's weekly benefit amount, the reason for the deduction, the method of computing it in sufficient detail to enable him to verify the accuracy of such deduction, and his right to protest, request redetermination, or appeal.

(b) A written notice of determination is not required for subsequent weeks that a deduction is made for the same reason and on the basis of the same facts, if the notice of determination pursuant to (2)(a), or a booklet or pamphlet given him with such notice explains (i) the several kinds of deductions which may be made under the State law (e.g., retirement pensions, vacation pay, and overpayments); (ii) the method of computing each kind of deduction in sufficient detail that claimant will be able to verify the

accuracy of deductions made from his weekly benefit payments; (iii) any limitation on the amount of any deduction or the time in which any deduction may be made; (iv) that he will not automatically be given a written notice of determination for subsequent weeks with respect to which there is a deduction for the same reason and on the basis of the same facts, but that he may obtain a written notice of determination upon request; (v) his right to protest, request redetermination, or appeal with respect to subsequent weeks for which there is a reduction from his benefits for the same reason, and on the basis of the same facts even though he does not automatically receive a written notice of determination; and (vi) that if the State law requires written notice of determination in order to effectuate a protest, redetermination, or appeal, he must be so advised and advised also that he must request a written notice of determination before he takes any such action.

g. Seasonality factors. If the individual's determination is affected by seasonality factors under the State law, an adequate explanation must be made. General explanations of seasonality factors which may affect determinations for subsequent weeks may be included in a booklet or pamphlet given claimant with his notice of monetary determination.

h. Disqualification or ineligibility. If a disqualification is imposed, or if the claimant is declared ineligible for one or more weeks, he must be given not only a statement of the period of disqualification or ineligibility and the amount of wage-credit reductions, if any, but also an explanation of the reason for the ineligibility or disqualification. This explanation must be sufficiently detailed so that he will understand why he is ineligible or why he has been disqualified, and what he must do in order to requalify for benefits or purge the disqualification. The statement must be individualized to indicate the facts upon which the determination was based, e.g., state, "It is found that you left your work with Blank Company because you were tired of working; the separation was voluntary, and the reason does not constitute good cause," rather than merely the phrase "voluntary quit." Checking a box as to the reason for the disqualification is not a sufficiently detailed explanation. However, this statement of the reason for the disqualification need not be a restatement of all facts considered in arriving at the determination.

1. Appeal rights. The claimant must be given information with respect to his appeal rights.

(1) The following information shall be included in the notice of determination:

(a) A statement that he may appeal or, if the State law requires or permits a protest or redetermination before an appeal, that he may protest or request a redetermination.

(b) The period within which an appeal, protest, or request for redetermination must be filed. The number of days provided by statute must be shown as well as either the beginning date or ending date of the period. (It is recommended that the ending date of the appeal period be shown, as this is the more understandable of the alternatives.)

(2) The following information must be included either in the notice of determination or in separate informational material referred to in the notice:

(a) The manner in which the appeal, protest, or request for redetermination must be filed, e.g., by signed letter, written statement, or on a prescribed form, and the place or places to which the appeal, protest, or request for redetermination may be mailed or hand-delivered.

(b) An explanation of any circumstances (such as nonworkdays, good cause, etc.) which will extend the period for the appeal, protest, or request for redetermination beyond the date stated or identified in the notice of determination.

(c) That any further information claimant may need or desire can be obtained together with assistance in filing his appeal, protest, or request for redetermination from the local office.

If the information is given in separate material, the notice of determination would adequately refer to such material. If it said, for example, "For other information about your (appeal), (protest), (redetermination) rights, see pages ____ to ____ of the

_____ (name of pamphlet or booklet) heretofore furnished to you."

6014 Separation Information Requirements Designed To Meet Department of Labor Criteria

A. Information to agency. Where workers are separated, employers are required to furnish the agency promptly, either upon agency request or upon such separation, a notice describing the reasons for and the circumstances of the separation and any additional information which might affect a claimant's right to benefits. Where workers are working less than full time, employers are required to furnish the agency promptly, upon agency request, information concerning a claimant's hours of work and his wages during the claim periods involved, and other facts which might affect a claimant's eligibility for benefits during such periods.

When workers are separated and the notices are obtained on a request basis, or when workers are working less than full time and the agency requests information, it is essential to the prompt processing of claims that the request be sent out promptly after the claim is filed and the employer be given a specific period within which to return the notice, preferably within 2 working days.

When workers are separated and notices are obtained upon separation, it is essential that the employer be required to send the notice to the agency with sufficient promptness to insure that, if a claim is filed, it may be processed promptly. Normally, it is desirable that such a notice be sent to the central office of the agency, since the employer may not know in which local office the worker will file his claim. The usual procedure is for the employer to give the worker a copy of the notice sent by the employer to the agency.

B. Information of worker. 1. *Information required to be given.* Employers are required to give their employees information and

instructions concerning the employee's potential rights to benefits and concerning registration for work and filing claims for benefits.

The information furnished to employees under such a requirement need not be elaborate; it need only be adequate to insure that the worker who is separated or who is working less than full time knows he is potentially eligible for benefits and is informed as to what he is to do or where he is to go to file his claim and register for work. When he files his claim, he can obtain more detailed information.

In States that do not require employers to furnish periodically to the State agency detailed reports of the wages paid to their employees, each employer is required to furnish to his employees information as to (a) the name under which he is registered by the State agency, (b) the address where he maintains his payroll records, and (c) the workers' need for this information if and when they file claims for benefits.

2. Methods for giving information. The information and instructions required above may be given in any of the following ways:

a. Posters prominently displayed in the employer's establishment. The State agency should supply employers with a sufficient number of posters for distribution throughout their places of business and should see that the posters are conspicuously displayed at all times.

b. Leaflets. Leaflets distributed either periodically or at the time of separation or reduction of hours. The State agency should supply employers with a sufficient number of leaflets.

c. Individual notices. Individual notices given to each employee at the time of separation or reduction in hours.

It is recommended that the State agency's publicity program be used to supplement the employer-information requirements. Such a program should stress the availability and location of claim-filing offices and the importance of visiting those offices whenever the worker is unemployed, wishes to apply for benefits, and to seek a job.

6015 Evaluation of Alternative State Provisions with Respect to Claims Determinations and Separation Information. If the State law provisions do not conform to the suggested requirements set forth in sections 6013 and 6014, but the State law contains alternative provisions, the Bureau of Employment Security, in collaboration with the State agency, will study the actual or anticipated effects of the alternative provisions. If the Administrator of the Bureau concludes that the alternative provisions satisfy the criteria in section 6012, he will so notify the State agency. If the Administrator of the Bureau does not so conclude, he will submit the matter to the Secretary. If the Secretary concludes that the alternative provisions satisfy the criteria in section 6012, the State agency will be so notified. If the Secretary concludes that there is a question

as to whether the alternative provisions satisfy the criteria, the State agency will be advised that unless the State law provisions are appropriately revised, a notice of hearing will be issued as required by the Code of Federal Regulations, title 20, section 601.5.

Appendix "C" to Part 625—Standard for Fraud and Overpayment Detection

Employment Security Manual (Part V, Sections 7510-7515)

7510-7515 Standard for Fraud and Overpayment Detection

7510 Federal Law Requirements. Section 303(a)(1) of the Social Security Act requires that a State law include provision for:

"Such methods of administration . . . as are found by the Secretary to be reasonably calculated to insure full payment of unemployment compensation when due."

Section 1003(a)(4) of the Internal Revenue Code and section 303(a)(5) of the Social Security Act require that a State law include provision for:

"Expenditure of all money withdrawn from an unemployment fund of such State, in the payment of unemployment compensation . . ."

Section 1007(b) of the Internal Revenue Code defines "compensation" as "cash benefits payable to individuals with respect to their unemployment."

7511 The Secretary's Interpretation of Federal Law Requirements. The Secretary of Labor interprets the above sections to require that a State law include provision for such methods of administration as are, within reason, calculated (1) to detect benefits paid through error by the agency or through willful misrepresentation or error by the claimant or others, and (2) to deter claimants from obtaining benefits through willful misrepresentation.

7513 Criteria for Review of State Conformity With Federal Requirements. In determining State conformity with the above requirements of the Internal Revenue Code and the Social Security Act, as interpreted by the Secretary of Labor, the following criteria will be applied:

A. Are investigations required to be made after the payment of benefits, for, in the case of interstate claims, are investigations made by the agent State after the processing of claims) as to claimants' entitlement to benefits paid to them in a sufficient proportion of cases to test the effectiveness of the agency's procedures for the prevention of payments which are not due? To carry out investigations, has the agency assigned to some individual or unit, as a basic function, the responsibility of making or functionally directing such investigations?

Explanation: It is not feasible to prescribe the extent to which the above activities are required; however, they should always be carried on to such an extent that they will show whether or not error or willful misrepresentation is increasing or decreasing, and will reveal problem areas. The extent and nature of the above activities should be varied according to the seriousness of the problem in the State. The responsible individual or unit should:

1. Check paid claims for overpayment and investigate for willful misrepresentation or, alternatively, advise and assist the operating units in the performance of such functions, or both;

2. Perform consultative services with respect to methods and procedures for the prevention and detection of fraud; and

3. Perform other services which are closely related to the above.

Although a State agency is expected to make a full-time assignment of responsibility to a unit or individual to carry on the functions described above, a small State agency might make these functions a part-time responsibility of one individual. In connection with the detection of overpayments, such a unit or individual might, for example:

(a) Investigate information on suspected benefit fraud received from any agency personnel, and from sources outside the agency, including anonymous complaints;

(b) Investigate information secured from comparisons of benefit payments with employment records to detect cases of concurrent working (whether in covered or noncovered work) and claiming of benefits (including benefit payments in which the agency acted as agency for another State).

The benefit fraud referred to herein may involve employers, agency employees, and witnesses, as well as claimants.

Comparisons of benefit payments with employment records are commonly made either by post-audit or by industry surveys. The so-called "post-audit" is a matching of control office wage-record files against benefit payments for the same period. "Industry surveys" or "mass audits" are done in some States by going directly to employers for pay-roll information to be checked against concurrent benefit lists. A plan

A. of investigation based on a sample post-audit will be considered as partial fulfillment of the investigation program; it would need to be supplemented by other methods capable of detecting overpayments in persons who have moved into noncovered occupations or are claiming interstate benefits.

B. Are adequate records maintained by which the results of investigations may be evaluated?

Explanation: To meet this criterion, the State agency will be expected to maintain records of all its activities in the detection of overpayments, showing whether attributable to error or willful misrepresentation, measuring the results obtained through various methods, and noting the remedial action taken in each case. The adequacy and effectiveness of various methods of checking for willful misrepresentation can be evaluated only if records are kept of the results obtained. Internal reports on fraudulent and erroneous overpayments are needed by State agencies for self-evaluation. Detailed records should be maintained in order that the State agency may determine, for example, which of several methods of checking currently used are the most productive. Such records also will provide the basis for drawing a clear distinction between fraud and error.

C. Does the agency take adequate action with respect to publicity concerning willful misrepresentation and its legal consequences to deter fraud by claimants?

Explanation: To meet this criterion, the State agency must issue adequate material on claimant eligibility requirements and must take necessary action to obtain publicity on the legal consequences of willful misrepresentation or willful nondisclosure of facts.

Public announcements on convictions and resulting penalties for fraud are generally considered necessary as a deterrent to other persons, and to inform the public that the agency is carrying on an effective program to

prevent fraud. This alone is not considered adequate publicity. It is important that information be circulated which will explain clearly and understandably the claimant's rights, and the obligations which he must fulfill to be eligible for benefits. Leaflets for distribution and posters placed in local offices are appropriate media for such information.

7515 Evaluation of Alternative State Provisions with Respect to Erroneous and Illegal Payments. If the methods of administration provided for by the State law do not conform to the suggested methods of meeting the requirements set forth in section 7511, but a State law does provide for

alternative methods of administration designed to accomplish the same results, the Bureau of Employment Security, in collaboration with the State agency, will study the actual or anticipated effect of the alternative methods of administration. If the Bureau concludes that the alternative methods satisfy the criteria in section 7513, it will so notify the State agency. If the Bureau does not so conclude, it will submit to the Secretary the results of the study for his determination of whether the State's alternative methods of administration meet the criteria.

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